

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FERTILIZANTES TOCANTINS S.A.,

Plaintiff,

Case No. 8:21-cv-2884-VMC-JSS

v.

TGO AGRICULTURE (USA) INC.,

Defendant.

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ORDER

This matter comes before the Court pursuant to Defendant TGO Agriculture (USA) Inc.'s ("TGO") Motion to Compel the Attendance of Lieven Cooreman at Trial (Doc. # 107), filed on April 19, 2023. Fertilizantes Tocantins S.A. ("FTO") responded on May 3, 2023. (Doc. # 108). For the reasons set forth below, TGO's Motion is denied.

This case involves an alleged contract between FTO and TGO to purchase a common fertilizer ingredient. FTO alleges that the two parties agreed to a contract to purchase a fertilizer ingredient. According to TGO, after it became clear that TGO would not deliver the ingredient, FTO modified a contract to purchase the same ingredient from another seller and thereby mitigated its damages. (Doc. # 107 at 3). Lieven Cooreman, the former CEO of FTO, was involved in the

negotiation of the modification. (Doc. # 63-1 at 263:23 - 264:7, 265:9-22, 267:15-25, 269:13-21). As of at least May 3, 2023, Mr. Cooreman is not an employee of FTO and is not represented by FTO's counsel. (Doc. # 108 at 13).

TGO seeks to compel the testimony of Mr. Cooreman to discuss (1) FTO's alleged actions to mitigate damages and (2) FTO's "standard business processes and policies and procedures." (Doc. # 107). In its opposition, TGO contends that the Motion is untimely, that TGO already unsuccessfully attempted to compel Mr. Cooreman's deposition testimony, and that Mr. Cooreman was not properly served and is outside the subpoena power of the Court. (Doc. # 108).

At the outset, the Court notes that it denied TGO's previous attempt to compel Mr. Cooreman's deposition testimony. (Doc. # 73). In its prior Order, the Court noted that Mr. Cooreman's testimony was not "relevant or proportional to the needs of this matter[.]" (Id. at 6). Here again, TGO has not demonstrated that the information it seeks from TGO is relevant or proportional to its defense. "The proponent of a motion to compel discovery bears the initial burden of proving that the information sought is relevant." Sardis v. Home Depot U.S.A., Inc., 2017 WL 3723618, at *1 (M.D. Fla. 2017). TGO has not demonstrated why it requires

the live testimony of Mr. Cooreman at trial to review FTO's general "policies and procedures" or to demonstrate that FTO allegedly mitigated its damages. Both these topics can be addressed through FTO's corporate representative and through various documents FTO has provided related to the alleged mitigation transaction.

Second, the Court notes that TGO's Motion is untimely. The Court noted in its Case Management and Scheduling Order that the deadline for all motions, including motions to compel, was January 13, 2023. (Doc. # 38). TGO does not explain why it delayed in filing its Motion or argue that it had good cause for the delay. Thus, the Court considers TGO's Motion untimely filed.

Finally, Mr. Cooreman is beyond the subpoena power of this Court. TGO argues - and FTO disputes - that it appropriately subpoenaed Mr. Cooreman pursuant to Federal Rule of Civil Procedure 45 by serving FTO's counsel. (Doc. ## 107, 108). However, regardless of whether TGO appropriately served the subpoena, the Court cannot enforce it. Pursuant to Rule 45(c), A subpoena may only compel a non-party to attend trial "within 100 miles of where the person resides, is employed, or regularly transacts business in person." Fed. R. Civ. P. 45(c). For parties or a party's officer, the court's

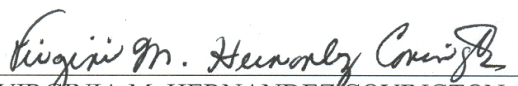
subpoena power is expanded to the State of Florida. Id. The parties agree that Mr. Cooreman resides in Brazil, well outside the 100-mile reach of this Court's subpoena power. Neither has TGO provided any evidence that Mr. Cooreman "regularly transacts business in person" within 100 miles of the Court. Therefore, the Court does not have the power to compel his testimony.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

TGO Agriculture (USA) Inc.'s Motion to Compel the Attendance of Lieven Cooreman at Trial (Doc. # 107) is **DENIED**.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 13th day of July, 2023.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE